## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re the Application of:<br>**William D. Swart,** *et al.*<br>Confirmation No.    5256 | Atty. Docket No.:    007412.00259 |
| Application No.:    09/973,081 | Group Art Unit:    2421 |
| Filed:    October 10, 2001 | Examiner:    Saltarelli, Dominic D. |
| For:    VIDEO AND DIGITAL MULTIMEDIA ACQUISITION AND DELIVERY SYSTEM AND METHOD | |

### APPEAL BRIEF

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Sir:

This is an Appeal Brief filed in support of Appellants' February 26, 2009, Notice of Appeal. Appeal is taken from the Final Office Action mailed November 17, 2008.

### General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733. Any necessary extensions of time are hereby requested.


### REAL PARTY IN INTEREST
37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is Comcast IP Holdings I, LLC of Wilmington, Delaware.

### RELATED APPEALS AND INTERFERENCES
37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

## STATUS OF CLAIMS
37 C.F.R. § 41.37(c)(1)(iii)

Claims 11-13 are pending and rejected. Appellants hereby appeal the rejection of claims 11-13.

## STATUS OF AMENDMENTS
37 C.F.R. § 41.37(c)(1)(iv)

A "Response Under 37 C.F.R. 1.116" was filed on January 20, 2009, in response to the Final Office Action. The Response Under 37 C.F.R. 1.116 contained remarks/arguments in support of patentability, and did not include amendments to the claims. The Advisory Action mailed January 28, 2009 acknowledged acceptance/entry of the Response Under 37 C.F.R. 1.116 for purposes of appeal. Accordingly, the pending claims are representative of the claims Appellants intend to pursue on (this) appeal. The claim listing provided herein reflects the status of those claims.

## SUMMARY OF CLAIMED SUBJECT MATTER
37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellants do not intend to limit the claims to those embodiments; all references to the filed specification and drawings are illustrative unless otherwise explicitly stated. Moreover, written description support may be found in the filed specification when read as a whole, in addition to the specific passages cited.

Independent claim 11 is directed to a method for acquiring and delivering content. The method comprises receiving a content search request from a user terminal. *Specification*, p. 42, line 19 – p. 43, line 15; Fig. 15. The method further comprises providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user. *Id.*, p. 6, line 29 – p. 7, line 19; Fig. 1. The method further comprises receiving a content download request from said user terminal, wherein a content of said content download request is one of said plurality of content found in response to said content search request. *Id.*, p. 11, line 20 – p. 12, line 18; Fig. 5. The method further comprises determining if the request is a

local download request or a remote download request. *Id.*, p. 19, line 30 – p. 20, line 7. The method further comprises, if the request is a remote download request, determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator. *Id.*, p. 19, lines 8-25. The method further comprises, if the content is to be delivered directly, establishing a communications link from the remote content server to the user terminal, thereby bypassing an aggregator, forwarding the requested content toward the user terminal via said television channel, validating the delivery of the content to the user terminal, and logging the validated delivery in one of a local server database and a remote server database. *Id.*, p. 21, line 28 – p. 22, line 5; Fig. 9A.

## GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
37 C.F.R. § 41.37(c)(1)(vi)

- Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. pat. no. 5,600,573 to Hendricks et al. ("Hendricks"), in view of U.S. pat. no. 5,956,716 to Kenner et al. ("Kenner"), U.S. pat. no. 5,864,546 to Campanella ("Campanella"), U.S. pat. no. 5,608,447 to Farry et al. ("Farry"), and U.S. pat. no. 5,485,197 to Hoarty ("Hoarty").

- Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendricks, Kenner, Campanella, Farry, Hoarty, in further view of U.S. pat. no. 5,446,919 to Wilkins ("Wilkins").

## ARGUMENT
37 C.F.R. § 41.37(c)(1)(vii)

### Rejection of Claims 11-13

#### *1. Independent Claim 11*

Independent claim 11 recites, among other features, ". . . receiving a content search request from a user terminal; providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user; receiving a content download request . . . wherein a content of said content download request is one of said plurality of content

found in response to said content search request . . . directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator . . . forwarding the requested content . . . via said television channel, validating the delivery of the content to the user terminal . . ."

The Final Office Action at pages 5-7 correctly indicates that Hendricks and Kenner fail to describe such features, but contends that a combination of Campanella, Farry, and Hoarty remedies the deficiencies of Hendricks and Kenner.

Even assuming, without admitting, that the descriptions provided in Campanella, Farry, and Hoarty may appropriately be analogized to the above-noted features recited in claim 11, the combination of references is improper. More specifically, combining Campanella with Farry or Hoarty would render Farry and Hoarty inoperable for at least the reasons discussed below.

Campanella discloses a system for formatting broadcast data for satellite transmission and radio reception. Uplink signals generated from broadcast stations are modulated in frequency division multiple access (FDMA) channels from ground stations. *See* Campanella at col. 3, lines 46-50. In other words, Campanella uses multiple frequencies for broadcast transmission.

Hoarty discloses that communications between a node and a subscriber's home occur as a compressed digital data stream on a time-shared basis or as addressed packets. *See* Hoarty at col. 9, lines 53-65. In other words, Hoarty describes communications based on time division multiplexing (TDM) techniques. As such, instead of using separate carriers at separate frequencies as in Campanella, Hoarty's communications use a single compressed digital data stream on a time-shared basis or as addressed packets. Therefore, the FDMA signals used by Campanella would render the communications in Hoarty inoperable.

Furthermore, Campanella discloses that the broadcast stations are configured to use frequency bands of 1467 to 1492 Megahertz (MHz) and uplinks from 7050 to 7075 MHz. *See* Campanella at col. 3, lines 31-45. In stark contrast, Hoarty describes channel operations within 72-76 MHz and uplink channels within the 15-18 MHz region. *See* Hoarty at col. 9, lines 46-50.

Thus, the operating frequency range of Campanella would also be in operable if combined with the disclosure of Hoarty.

Moreover, the combination of Campanella and Farry would render the operation of Farry inoperable. Farry describes communication between an information service provider and a particular subscriber end device via a virtual circuit through ATM switches. *See* Farry at col. 7, lines 15-22; FIG. 11. The ATM network described in Farry uses TDM techniques. *See* Farry at col. 5, lines 8-10. As discussed above, unlike Farry's video distribution network that uses TDM techniques, Campanella's broadcast stations use FDMA techniques. Thus, if Campanella and Farry were combined, the FDMA techniques used by the broadcast stations of Campanella would render inoperable Farry's video distribution network that uses TDM techniques in an ATM network.

In short, Campanella's FDMA techniques are inoperable with the TDM techniques of Hoarty and Farry. As such, one of ordinary skill in the art, when reading each of the references as a whole as required by *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied 469 U.S. 851 (1984) and MPEP § 2141.02(VI), would not have had an apparent reason to combine the references in the manner indicated at pages 5-7 of the Final Office Action. Indeed, as discussed above, the technologies of Campanella, Farry, and Hoarty are incompatible. As such, a combination of Campanella, Farry, and Hoarty would not have provided a reasonable expectation of success. *See* MPEP § 2143.02 (reasonable expectation of success is required). For at least these reasons, the proposed combination of references is improper.

For at least the foregoing reasons, claim 11 is allowable.

### *2. Dependent Claims 12 and 13*

Claims 12 and 13 depend from claim 11 and are allowable for at least the same reasons as claim 11, as Wilkins fails to remedy the deficiencies of the references discussed above (notwithstanding whether Wilkins is properly combinable with any of the other references).

## CONCLUSION

For all of the foregoing reasons, Appellants respectfully submit that the final rejection of claims 11-13 is improper and should be reversed.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: May 20, 2009

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## CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

Claims 1-10 (Cancelled).

11. (previously presented) A method for acquiring and delivering content, comprising:

receiving a content search request from a user terminal;

providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user;

receiving a content download request from said user terminal, wherein a content of said content download request is one of said plurality of content found in response to said content search request;

determining if the request is a local download request or a remote download request;

if the request is a remote download request, determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator; and

if the content is to be delivered directly:

establishing a communications link from the remote content server to the user terminal, thereby bypassing an aggregator,

forwarding the requested content toward the user terminal via said television channel,

validating the delivery of the content to the user terminal, and

logging the validated delivery in one of a local server database and a remote server database.

12. (previously presented) The method of claim 11, wherein:

if the request is a local download request, performing the steps of:

analyzing metadata related to the requested content;

determining, based on the analyzed metadata, if the requested content is in a correct format for delivery to the user terminal; and

reformatting the requested content as needed into a required format for delivery to the user terminal;

routing requested content of the correct format to a content delivery server;

analyzing a user profile associated with a user of the user terminal and the content metadata; and

based on the analyzed user profile and the content metadata:

applying a digital rights management scheme to the content delivery, and

incorporating one or more advertisements into the requested content including at least one advertisement targeted to a user of the user terminal.


13. (previously presented) The method of claim 11, wherein:

if the requested content is to be delivered indirectly, performing the steps of:

acquiring the requested content via a content acquisition server located in the aggregator;

if the requested content should be stored at the aggregator local storage, performing the steps of:

determining a format of the requested content,

if the format of the requested content is not correct for storage, reformatting the request content,

storing the requested content;

analyzing metadata related to the requested content;

determining, based on the analyzed metadata, if the requested content is in a correct format for delivery to the user terminal; and

reformatting the requested content as needed into a required format for delivery to the user terminal;

routing requested content of the correct format to a content delivery server;

analyzing a user profile associated with a user of the user terminal and the content metadata; and

based on the analyzed user profile and the content metadata:

applying a digital rights management scheme to the content delivery, and

incorporating one or more advertisements into the requested content including at least one advertisement targeted to a user of the user terminal.

## EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

NONE.

**RELATED PROCEEDINGS APPENDIX**
37 C.F.R. § 41.37(c)(1)(x)

NONE.